IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.386 OF 2007
IN
NOTICE OF MOTION NO.441 OF 2007
IN
L.C. SUIT NO.373 OF 2007

Goldie Sud &
Shilpa Goldie Sud ..Appellants.

Vs.

The Municipal Corpn.
of Greater Mumbai & Ors. ..Respondents.

Mrs.Veena Thadhani for the Appellants.
Mrs.Geeta Joglekar for Respondent No.1.
Mr.Ghag with Mr.A.S.Naik for Respondent No.4 and 5.

ALONGWITH

APPEAL FROM ORDER NO.422 OF 2007
IN
NOTICE OF MOTION NO.1613 OF 2007
IN
L.C. SUIT NO.1594 OF 2007

Goldie Sud &
Shilpa Goldie Sud ..Appellants.

Vs.

Dr.Pushpa Badhe &
2 Ors. ..Respondents.
(Orig.Plffs.)

And

Harash Saigal &
5 Ors. ..Respondent.
(Orig.Deft.
Nos.3 to 8)

Mrs.Veena Thadhani for the Appellants.
Mr.Ghag with Mr.A.S.Naik for Respondent Nos.1 to 3.
Mrs.Geeta Joglekar for Respondent No.9.

CORAM : A.S. OKA, J.
DATED : 11TH JUNE, 2007

P.C. :

These Appeals can be conveniently disposed of by a common order.

2. In Appeal from Order No.386 of 2007 the Appellants (Original Plaintiffs in L.C. Suit No.373 of 2007) have taken exception to the order dated 7th February, 2007 passed by the learned Judge of the City Civil Court in Notice of Motion No.441 of 2007 in L.C. Suit No.373 of 2007 by which prayer made by the Appellants for grant of ad-interim reliefs has been rejected. The Respondents in the said Appeal are the Defendants.

3. The same Appellants have preferred A.O. No.422 of 2007. The said Appeal arises out of order dated 25th April, 2007 passed by the learned trial Judge in Notice of Motion NO.1613 of 2007 in L.C. Suit No.1594 of 2007 filed by the 1st to 3rd Respondents in Appeal from Order No.422 of 2007. By the said order dated 25th April, 2007, the trial Judge made the said Notice of Motion taken out by the first to

third Respondents in Appeal from Order No.422 of 2007 returnable and granted ad-interim injunction. The Appellants in the said Appeal are the first and second Defendants. By the said order dated 25th April, 2007, the learned trial Judge has granted ad-interim injunction in favour of the 1st to third Respondents.

4. The Appellants are the co-owners of a plot of land bearing No.494 of T.P.S. III Bandra. There is a building consisting of Ground plus three upper floors constructed thereon. The said building is partly occupied by the tenants. There were two water connections given to the said building which were sufficient for adequate supply of water to all the tenants. According to the case of the Appellants, the Mumbai Municipal Corporation disconnected the water connection to the said building. Therefore, the Appellants were required to file Suit No.4474 of 2005 in the City Civil Court. According to the case of the Appellants, one of the tenants Shri Shoaib Menon was given a separate water connection by the Municipal Corporation without their consent.

5. The Appellants filed L.C. Suit No.373 of 2007 against the Respondents in the Appeal from Order No.386 of 2007 inter-alia praying for a permanent injunction against the fist Respondents Municipal Corporation from granting separate water connection to the tenants. A Notice of Motion No.441 of 2007 was taken out in the said suit for injunction.

6. It appears that the first Respondent Corporation granted separate water connections to the 4th and 5th Defendants in L.C. Suit No.373 of 2007. (4th and 5th Respondents in A.O.No.386 of 2007)

7. The learned trial Judge held that the water connection appears to have been granted after due inquiry by the Municipal Corporation and therefore the learned trial Judge declined to grant ad-interim relief.

8. The 1st and 3rd Respondents in A.O. No.422 of 2007 are the 4th and 5th Respondents in A.O. No.386 of 2007. They are in possession of certain premises in the building owned by the Appellants. In the Notice of Motion taken out by the Respondent Nos.1 to 3 in A.O. No.422 of 2007, on 25th April, 2007 by

the impugned order, the learned trial Judge has granted ad-interim relief in terms of prayer clauses (b) and (e). The prayers (b) and (e) read thus :-

> "b) pending the hearing and final disposal of the suit the Defendant No.1 to 4 may be restrained by a temporary order and injunction of this Hon'ble Court from in any manner interfering with the work of the Plaintiffs in digging, excavating, fastening clamps etc. for the purpose of laying the pipes in the compound as indicated in blue stripes in Exhibit "A" upto the first floor flat No.2 and 2nd floor flat No.3 as per the work order No.AP/HW/2791 WW(B-6295) dated 12/1/2007. Of the Meleagrina Building on plot bearing 494, T.P.S. III, corresponding C.T.S. No.F/366, at Linking Road, Bandra (West), Mumbai - 400 050 save and except by following due process of law."
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> "e) That pending the hearing and final disposal of the suit this Hon'ble Court may be pleased to direct the Senior Inspector of Police Khar Police Station, Khar (West) to grant police protection to the Plaintiffs as well as the Municipal Staff, at the time of carrying out the work of laying the pipes in the compound as indicted in Exhibit "A" upto the flat No.2 and 2nd floor flat No.3 as per the work order No.AP/HW/2791 WW(B-6295) dated 12/1/2007.

of the Meleagrina Building standing on Plot bearing No.494, T.P.S. III, corresponding to C.T.S. No.F/366, at Linking Road, Bandra (West), Mumbai - 400 050."

The prayers in Notice of Motion No.441 of 2007 taken out by the Appellants are essentially for preventing laying down of pipeline for new water connection granted by the Municipal Corporation. The said prayer was rejected and therefore Appeal from Order No.386 of 2007 is filed.

9. The learned counsel appearing for the Appellants submitted that the Municipal Corporation had no authority to grant separate water connection to the persons who are claiming to be tenants occupying the premises in the building of which the Appellants are admittedly the owners. She submitted that without the consent of the Appellants, the Municipal Corporation could not have granted water supply to the concerned Respondents. She submitted that the Appellants are filing independent proceedings to challenge the action of the Municipal Corporation of granting water supply. She submitted that for giving separate water supply to the concerned

Respondents, the water pipeline will have to be laid through the property of the Appellants and, therefore, loss will be caused to the Appellants. She submitted that on the basis of grant of water connection, the concerned Respondents will claim tenancy rights thereby seriously affecting the rights of the Appellants.

10. The learned counsel for the Respondent Nos.1 to 3 in Appeal from Order No.422 of 2007 submitted that no prejudice will be caused to the Appellants if water supply is given to the concerned Respondents. He placed reliance on an affidavit filed by the 1st and 2nd Respondents on 6.6.2007. He submitted that no interference is called for.

11. I have considered the submissions. The Municipal Corporation has granted water supply to certain persons who are occupying premises in the building owned by the Appellants. If water supply is granted by the Municipal Corporation to occupants of the building, by no stretch of imagination, irreparable loss will be caused to the Appellants. The Notices of Motion and the suits are still pending and it is obvious that the work which may be

carried out for the purpose of making available of water to the concerned occupants will be subject to further orders which may be passed by the trial Court in the suits. It is obvious that persons in whose favour water supply has been granted will not be entitled to claim any rights as tenants only on the basis of grant of water supply.

12. It is true that digging work will have to be carried out through the property of the Appellants for the purpose of laying the water pipeline. It will be the responsibility of the concerned persons who are being granted water supply, to ensure that after the pipelines are laid and connection is given, the property of the Appellants will be restored to the same condition in which it was existing earlier.

13. To ensure that the work of laying down the pipeline is carried out without causing any loss or prejudice to the Appellants, the work will have to be carried out in presence and under the supervision of a Court Commissioner appointed by trial Court.

14. For ensuring that after carrying out the work,

the property of the Appellants will be restored to the condition as it exists today, the 1st to 3rd Respondents will deposit a total amount of Rs.50,000/- in the trial Court. After the Court Commissioner submits a report to the trial Court regarding the satisfactory completion of the work, the trial Court will permit the 1st to 3rd Respondents to withdraw the said amount.

15. If the work is not completed to the satisfaction of the Court Commissioner, the trial Court can always pass an order directing the Commissioner to complete the remaining work by utilising the amount deposited by the 1st to 3rd Respondents.

16. In view of what is observed above, the Appeals are disposed of by passing the common order :-

(a) The impugned orders are confirmed subject to following modifications :-

(i) The trial Court will appoint one of its officers as a Court Commissioner to supervise the work of laying down water pipelines and

of providing the water connection to 1st and 3rd Respondents in A.O No.422 of 2007. The work will be carried out in such manner that after laying down the pipelines, the property of the Appellants will be restored in the same condition as it exists today. The entire cost of laying down the water pipeline shall be borne and paid by the 1st to 3rd Respondents.

(ii) The work will be carried out under the supervision of the Court Commissioner, appointed by the trial Court. The remuneration of the Court Commissioner will be paid by the Plaintiffs in L.C. Suit No.1594 of 2007.

(iii) The 1st to 3rd Respondents will deposit a sum of Rs.50,000/- in the trial Court. The work will be carried out only after the deposit of the said amount.

iv) The trial Court will refund the amount of Rs.50,000/- to 1st to 3rd Respondents only after the Court Commissioner submits a report

regarding satisfactory completion of the work. If the 1st to 3rd Respondents in A.O. No.422 of 2007 fail to carry out the work satisfactorily, the remaining work will be carried out by the Court Commissioner by utilising the said amount of Rs.50,000/-.

v) It is made clear that the grant of water connection in favour of the concerned Respondents will not create any equity in their favour and only on the basis of the grant of water connection, they will not be entitled to claim any tenancy rights in respect of the premises in question.

vi) It is made clear that grant of water connection to the concerned Respondents will be subject to further orders which may be passed by the trial Court in the pending Notices of Motion and suits.

(b) This order will not preclude the Appellants from taking out appropriate proceedings from challenging the action of the Municipal Corporation of granting water connection to

the concerned Respondents.

(c) All contentions of the parties are expressly kept open.

(d) Parties to act on an authenticated copy of this order.

(A.S. OKA, J.)